The Use of Deadly Force Against Intruders

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Intrusion and the Use of Deadly Force

Using deadly force against one who intrudes on your premises or vehicle is a serious matter governed by rules and stipulations both on the state and federal levels. The final decision as to whether deadly force was necessary is often settled in a court of law. However, if you can prove that deadly force prevented or stopped a crime such as kidnapping, carjacking, rape or unlawful entry into a home, you cannot be found guilty of murder or manslaughter charges. Under these circumstances you are not required to retreat but are justified in using deadly force.

When to Use Deadly Force

- The laws upon which the use of deadly force of governed are known as the "Castle Doctrine," coined by Florida lobbyist Marion P. Hammer. The concept is based on the idea that a man's home is his "castle." They are also referred to as "Stand your Ground" bills. The intent behind these laws is to substantiate the legal right a person has to not retreat but use deadly force if necessary in the defense of his property or personal safety. Deadly force is justified if you are attacked and have not in any way provoked your attacker. This makes you a "faultless victim." Deadly force is also acceptable if you have reasonable suspicion that without using such force your attacker may cause you or a third party severe bodily harm. However, there are certain caveats that are considered in court proceedings that can nullify these justifications; for example: did the attacker attempt to retreat prior to your use of deadly force, or communicate that he would withdrawal

Third Party Use of Deadly Force

- If someone is attacked and requires the assistance of a third party to adequately defend himself, the third party is justified in coming to the aid of the victim. If the third party finds it necessary to employ deadly force, he will need to make his case in court that his assistance was actually a reasonable action to have taken. In some cases, depending upon the state and jurisdiction of the incident that required deadly force, the third party must be either a family member or resident of the home in which the attacked individual resides.

Duty to Retreat

- Some states and jurisdictions require that a victim of an attack first has a duty to retreat prior to resorting to deadly force. This narrows the scope of the law, requiring the individual under assault to have exhausted all other avenues of defense prior into employing deadly force before it is a justified. Even under these circumstances, the use of deadly force is justified if there is no other way to avoid sexual assault, bodily harm or death.

Intruder Self-Defense

- If the intruder attempts to withdraw and the victim then employs deadly force the intruder/attacker has a right to self-defense. In fact, under these circumstances it is possible for the intended victim to be liable for injuries incurred by the would-be attacker, should the level of force prove to be greater than what the attacker intended to use. Having said this, deadly force is still legally used if employed at the onset of an attack or intrusion as long as the victim can prove it was necessary at the time and place of the incident.

Defense of Property

- If a trespasser enters your home or property you have the right to eject him by force but not by deadly force. Should you have a reasonable belief that the trespasser intends to commit a felony (bodily harm, sexual assault, etc.) or any "imminent, unlawful interference," then you can use deadly force to protect yourself and/or property. In the case of theft, however, you should exhaust all other reasonable means of preventing the felony prior to using deadly force or you could potentially lose your protection under this law.

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CASTLE DOCTRINE AND SELF-DEFENSE

By: Christopher Reinhart, Senior Attorney

You asked about the "castle doctrine," how it acquired its name, how many states have adopted bills on it, and any information about its effect in states that have adopted it.

SUMMARY

Generally, the "castle doctrine" provides that someone attacked in his home can use reasonable force, which can include deadly force, to protect his or another's life without any duty to retreat from the attacker. It is defined differently in different states. The name appears to have its origin in the English common law rules protecting a person's home and the phrase "one's home is one's castle."

In recent years, a number of states have adopted or considered bills referred to as "castle doctrine" bills. These bills expand the circumstances where a person can use self-defense without retreating and contain other provisions, such as immunity for someone who legally uses force in self-defense. A *Washington Post* article states that the Florida bill was given the name the "castle doctrine" by Florida lobbyist Marion P. Hammer, a former National Rifle Association president ("Florida Gun Law to Expand Leeway for Self-Defense," *Washington Post*, April 26, 2005). These bills have also been called "stand your ground" bills.

We found 15 states that adopted a "castle doctrine" bill in the last two years. These states are: Alabama, Alaska, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Oklahoma, South Carolina, and South Dakota. A number of other states considered bills on this topic. In New Hampshire, the legislature passed a "castle doctrine" bill but the governor vetoed it.

These “castle doctrine” bills contain a number of different provisions and the states vary in which provisions they adopted. Some of these expanded the circumstances where force could be used in self-defense without a duty to retreat, some adopted provisions on criminal or civil immunity for legally using force in self-defense, and some contained all of these provisions.

We could not find any studies on the impact of these laws. A June 11, 2006 *Orlando Sentinel* article stated that it was too early to see the impact of Florida's new law, which took effect October 1, 2005, and there were no statewide statistics on the number of self-defense claims before or after that date. The newspaper found 13 people who used self-defense in central Florida over five months (resulting in six deaths and four people wounded). In the investigation of the 13 people who used self-defense, three were charged with a crime, five cleared, and the others were still under review. The newspaper stated that police and prosecutors handled investigations of these cases in a range of ways. A copy of this article is attached (“Cases Involving the New Deadly Force Law are Handled in a Broad Range of Ways,” *Orlando Sentinel*, June 11, 2006).

The sections below describe provisions in the “castle doctrine” bills and Connecticut's laws on self-defense.

“CASTLE DOCTRINE” BILLS

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1. They remove the duty to retreat from an aggressor using force or deadly force under certain circumstances. The states vary in how broadly this applies. For example, Alaska expands the types of premises where a person does not have a duty to retreat when using force in defense of self to include any place the person resides, a place where he is a guest, and his workplace. The Alaska law also applies to protecting a child or member of the person's household, regardless of location.

2. Kansas removes the duty to retreat from its use of force statutes and adds a general statement that a person not engaged in illegal activity who is attacked in a place where he has a right to be has no duty to retreat and has the right to stand his ground and meet force with force.

3. Some states add a legal presumption about when a person is justified in using force against intruders. For example, Florida added a presumption that a person using force had a reasonable fear of death or serious injury to himself or another if (a) the person against whom he used force was illegally and forcefully entering a dwelling or occupied vehicle, was in the process of doing so, or removed or was attempting to remove a person against his will and (b) the person using force knew or had reason to believe this was occurring. These presumptions, which vary by state, have exceptions and do not apply under specified circumstances, such as when (a) the person force is used against had a right to be in the dwelling or was a lawful resident, (b) the person using force was engaged in illegal activity, or (c) the person force is used against is a law enforcement officer performing his duties who identified himself or the person using force knew or should have known the person was an officer.

4. Some states, such as Florida, include a presumption that a person who illegally or forcefully enters or attempts to enter a dwelling or occupied vehicle is presumed to be doing so with intent to commit an illegal act involving force or violence.

5. Many of the bills provide immunity from criminal prosecution for a person who legally uses force or deadly force. This can apply to arrest, detention in custody, charging, and prosecuting. Some also specify that law enforcement is authorized to use standard procedures to investigate but cannot arrest the person unless there is probable cause that the use of force was unlawful.

6. Many also provide immunity from civil actions for a person who is justified in using force or deadly physical force. They require a court to award reasonable attorney's fees, costs, compensation for lost income, and expenses if the court finds that the person acted lawfully and is immune from prosecution.

CONNECTICUT LAW

Under Connecticut law, a person may use physical force (self defense): to protect himself or a third person, his home or office, or his property; to make an arrest or prevent an escape; or to perform certain duties (for example, a corrections officer may use force to maintain order and discipline, a teacher to protect a minor, and a parent to discipline a child). A person cannot use physical force to resist arrest by a reasonably identifiable peace officer, whether the arrest is legal or not (CGS § 53a-23).

Self defense or justification is a defense in any prosecution (CGS § 53a-16). The person claiming justification has the initial burden of producing sufficient evidence to assert self-defense. When raised as a defense at a trial, the state has the burden of disproving self defense beyond a reasonable doubt (CGS § 53a-12).

Physical Force in Defense of Person

A person is justified in using reasonable physical force on another person to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force. The defender may use the degree of force he reasonably believes is necessary to defend himself or a third person. But deadly physical force cannot be used unless the actor reasonably believes that the attacker is using or about to use deadly physical force or inflicting or about to inflict great bodily harm.

Additionally, a person is not justified in using deadly physical force if he knows he can avoid doing so with complete safety by:

1. retreating, except from his home or office in cases where he was not the initial aggressor or except in cases where he a peace officer, special policeman, or a private individual assisting a peace officer or special policeman at the officer's directions regarding an arrest or preventing an escape;

2. surrendering possession to property the aggressor claims to own; or

3. obeying a demand that he not take an action he is not otherwise required to take.

Lastly, a person is not justified in using physical force when (1) with intent to cause physical injury or death to another person, he provokes the person to use physical force, (2) use of such force was the product of a combat by agreement not specifically authorized by law, or (3) he is the initial aggressor (unless he withdraws from the encounter, effectively communicates this intent to the other person, and the other person continues to or threatens to use physical force) (CGS § 53a-19).

Physical Force in Defense of Premises

A person who possesses or controls property or has a license or privilege to be in or on it is justified in using reasonable physical force when and to the extent he reasonably believes it to be necessary to stop another from trespassing or attempting to trespass in or upon it. The owner can use deadly physical force only (1) to defend a person as described above, (2) when he reasonably believes it is necessary to prevent the trespasser from attempting to commit arson or any violent crime, or (3) to the extent he reasonably believes it is necessary to stop someone from forcibly entering his home or workplace (and for the sole purpose of stopping the intruder) (CGS § 53a-20).

Physical Force in Defense of Property

A person is justified in using reasonable physical force when and to the extent he reasonably believes it necessary to (1) prevent attempted larceny or criminal mischief involving property or (2) regain property that he reasonably believes was stolen shortly before.

When defending property, deadly force may be used only when it is necessary to defend a person from the use or imminent use of deadly physical force or infliction or imminent infliction of great bodily harm as described above (CGS § 53a-21).

Supreme Court Decision on Self Defense

In 1984, the Connecticut Supreme Court articulated the test for determining the degree of force warranted in a given case. Whether or not a person was justified in using force to protect his person or property is a question of fact that focuses on what the person asserting the defense reasonably believed under the circumstances (*State v. DeJesus*, 194 Conn. 376, 389 (1984)). The test for the degree of force in self-defense is a subjective-objective one. The jury must view the situation from the defendant's perspective; this is the subjective component. The jury must then decide whether the defendant's belief was reasonable (*DeJesus* at 389 n.13).